

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:23-cv-00576-FDW**

TERRELL HOWARD,)	
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)	
Plaintiff,)	
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)	
vs.)	<u>ORDER</u>
)	
)	
)	
MECKLENBURG COUNTY JAIL,)	
)	
)	
Defendant.)	
)	

THIS MATTER is before the Court on initial review of Plaintiff's Complaint [Doc. 1] filed under 42 U.S.C. § 1983. See 28 U.S.C. §§ 1915(e) and 1915A. Plaintiff is proceeding in forma pauperis. [Docs. 2, 7].

I. BACKGROUND

Pro se Plaintiff Terrell Howard ("Plaintiff") is a detainee at the Mecklenburg County Jail (the "Jail") in Charlotte, North Carolina. He filed this action on September 13, 2023, pursuant to 42 U.S.C. § 1983, naming the Jail as the sole Defendant in this matter. [Doc. 1]. Recently, Plaintiff filed a statement under penalty of perjury, which the Court construes as an addendum to Plaintiff's Complaint. [Doc. 5]. Plaintiff alleges that he has been detained at the Jail since February 6, 2020, and he is subject to unsafe living conditions there. [Doc. 5 at 1]. Plaintiff alleges that there is black mold at the Jail causing him severe stomach pain, weight loss, vomiting, loss of appetite, and diarrhea. [Id.]. He does not allege what constitutional right he claims has been violated. [See Doc. 1 at 3]. Plaintiff seeks monetary relief only. [Doc. 1 at 5].

II. STANDARD OF REVIEW

Because Plaintiff is proceeding in forma pauperis, the Court must review the Complaint to

determine whether it is subject to dismissal on the grounds that it is “frivolous or malicious [or] fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2). Furthermore, under § 1915A the Court must conduct an initial review and identify and dismiss the complaint, or any portion of the complaint, if it is frivolous, malicious, or fails to state a claim upon which relief may be granted; or seeks monetary relief from a defendant who is immune to such relief.

In its frivolity review, this Court must determine whether the Complaint raises an indisputably meritless legal theory or is founded upon clearly baseless factual contentions, such as fantastic or delusional scenarios. Neitzke v. Williams, 490 U.S. 319, 327-28 (1989). Furthermore, a pro se complaint must be construed liberally. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the liberal construction requirement will not permit a district court to ignore a clear failure to allege facts in his Complaint which set forth a claim that is cognizable under federal law. Weller v. Dep’t of Soc. Servs., 901 F.2d 387 (4th Cir. 1990).

III. DISCUSSION

To state a claim under § 1983, a plaintiff must allege that he was deprived of a right secured by the Constitution or laws of the United States, and that the alleged deprivation was committed by a “person” acting under color of state law. See 42 U.S.C. § 1983; Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 49-50 (1999); Health & Hosp. Corp. of Marion Cnty. v. Talevski, 599 U.S. 166, 143 S.Ct. 1444 (2023).

Taking Plaintiff’s allegations as true and giving Plaintiff the benefit of every reasonable inference, Plaintiff has failed to state a claim for relief. A correctional institution is not a “person” subject to suit under § 1983, Brooks v. Pembroke Jail, 722 F.Supp. 1294, 1301 (E.D.N.C. 1989), and Plaintiff names no other Defendants in this matter. The Court will dismiss the Jail as a Defendant. The Court, however, will allow Plaintiff to amend his Complaint to state a claim for relief, if the facts support such an amendment. In allowing Plaintiff to amend his Complaint, the

Court instructs Plaintiff that, to establish liability under 42 U.S.C. § 1983, a plaintiff must show that the defendants “acted personally” to cause the alleged violation. See Vinnedge v. Gibbs, 550 F.2d 926, 928 (4th Cir. 1977) (citation omitted). Moreover, suits against an officer in his official capacity “generally represent only another way of pleading an action against an entity of which an officer is an agent.” Kentucky v. Graham, 473 U.S. 159, 165, 105 S.Ct. 3099 (1985) (1985) (quoting Monell v Dep’t of Soc. Servs. of the City of New York, 436 U.S. 658, 690 n. 55, 98 S.Ct. 2018, 2035 (1978)). The Office of Sheriff is not liable under § 1983 for an employee’s acts “unless action pursuant to official municipal policy of some nature caused [the] constitutional tort.” Collins v. City of Harker Heights, 503 U.S. 115, 120-21, 112 S.Ct. 1061, 1066 (quoting Monell, 436 U.S. at 691, 98 S.Ct. at 2036). That is, “[f]or a governmental entity to be liable under section 1983, the official policy must be the moving force of the constitutional violation.” Moore v. City of Creedmoor, 345 N.C. 356, 366, 481 S.E.2d 14, 21 (1997) (internal quotation marks and citations omitted). “Thus, the entity’s ‘policy or custom’ must have played a part in the violation of federal law.” Id. (quoting Monell, 436 U.S. 658, 694, 98 S.Ct. at 2037-38).

IV. CONCLUSION

For the foregoing reasons, the Court concludes that Plaintiff’s Complaint fails initial review. The Court will allow Plaintiff thirty (30) days to amend his Complaint, if he so chooses, to properly state a claim upon which relief can be granted against a proper defendant. Any amended complaint will be subject to all timeliness and procedural requirements and will supersede the Complaint. Piecemeal amendment will not be permitted. Should Plaintiff fail to timely amend his Complaint in accordance with this Order, the Court will dismiss this action

without prejudice.¹

ORDER

IT IS, THEREFORE, ORDERED that Plaintiff shall have thirty (30) days in which to amend his Complaint in accordance with the terms of this Order. If Plaintiff fails to so amend his Complaint, the matter will be dismissed without prejudice.

IT IS FURTHER ORDERED that Defendant Mecklenburg County Jail is **DISMISSED** as a Defendant in this matter.

The Clerk is respectfully instructed to mail Plaintiff a blank prisoner § 1983 form.

IT IS SO ORDERED.

Signed: October 19, 2023


Frank D. Whitney
United States District Judge

¹ Plaintiff is also cautioned to carefully review the Order of Instructions in this case. [See Doc. 3]. While the Court construed Plaintiff's filing [Doc. 5] as an addendum to his Complaint, it was subject to being stricken from the record in this matter. Future improper filings may be stricken.